



MIKE PENCE, *Governor*  
JAMAL L. SMITH, *Executive Director*

ICRC No.: EMrt14020095

[REDACTED],  
Complainant,

v.

INDIANA DEPARTMENT OF WORKFORCE DEVELOPMENT,  
Respondent.

### NOTICE OF FINDING

The Deputy Director of the Indiana Civil Rights Commission ("Commission"), pursuant to statutory authority and procedural regulations, hereby issues the following findings with respect to the above-referenced case. Probable cause exists to believe that an unlawful discriminatory practice occurred in this instance. 910 IAC 1-3-2(b).

On February 11, 2014, [REDACTED] ("Complainant") filed a Complaint with the Commission against Indiana Department of Workforce Development ("Respondent") alleging retaliation in violation of [REDACTED] the Indiana Civil Rights Law (Ind. Code § 22-9, *et seq.*) Accordingly, the Commission has jurisdiction over the parties and the subject matter.

An investigation has been completed. Both parties have had an opportunity to submit evidence. Based on the final investigative report and a review of the relevant files and records, the Deputy Director now finds the following:

The issue presented to the Commission is whether Respondent retaliated against Complainant for participating in a co-worker's complaint of discrimination filed with the Commission. In order to prevail, Complainant must show that: (1) she participated in the investigation of a co-worker's complaint of discrimination; (2) Respondent was aware of the complaint; (3) she suffered an adverse employment action; (4) she was meeting Respondent's legitimate business expectations; and (5) there is a causal connection between Complainant's participation in the previous complaint of discrimination filed with the Commission and the adverse employment action.

It is undisputed that Complainant's co-worker, Tonya Jarmon-Holland filed a complaint of discrimination with the Commission on or about June 17, 2013 (EMra13061263) and that Respondent was aware both of the complaint and the fact that Complainant was named as a



comparator in the complaint. Moreover, there is reason to believe that Complainant was meeting Respondent's legitimate business expectations; however, Respondent terminated her employment on or about January 30, 2014. As such, there is a nexus exists between Complainant's participation in the previous complaint of discrimination filed with the Commission and her termination.

By way of background, Complainant was hired as an Audit Examiner III in the Collection and Enforcement unit on February 4, 2013 with duties including collecting on employer accounts where they had outstanding liabilities and delinquent reporting communication and resolutions. During the time relevant to the Complaint, Complainant alleges and evidence substantiates that she was never issued any warnings or other disciplinary action prior to June 17, 2013, the date on which Tonya Jarmon-Holland, her co-worker, filed a complaint of discrimination with the Commission. Witness testimony also substantiates that Complainant was meeting Respondent's legitimate business expectations with one witness stating that she "was the one who received the complaints and that Complainant had never received one." Nonetheless, shortly after Jarmon-Holland filed her Complaint with the Commission asserting that her friend, Complainant, was treated more favorably, Complainant received a "needs improvement" on her February 2013 to July 2013 working test appraisal issued in August 2013. While Respondent asserts that there was "no known connection" between Complainant's Complaint and Jarmon-Holland's complaint, Respondent admits that it was aware that the "women shared a friendship" and Complainant admits in the instant Complaint that she believed she was treated more favorably than Jarmon-Holland; moreover, Respondent was aware that Jarmon-Holland mentioned Complainant by name as a comparator during the course of the investigation. Both parties admit that Complainant informed Respondent that she did not agree with the contents of the working test appraisal; nonetheless, Complainant's probationary period was extended for another six months effective August 13, 2013 and Complainant was terminated on or about January 31, 2014, after receiving another unfavorable working test appraisal.

Despite Respondent's assertions, there is sufficient evidence to believe that Complainant was terminated after being named as a comparator in her co-worker's complaint of discrimination. While the Commission made several requests for documentation, including write-ups or any evidence of disciplinary action issued to Complainant prior to Jarmon-Holland's act of filing a complaint of discrimination, Respondent failed to provide such documentation. Rather, Complainant asserts and witness testimony substantiates that Complainant never received disciplinary action from Respondent prior to her involvement with Jarmon-Holland's complaint of discrimination. Further, several witnesses have asserted that Complainant not only met Respondent's legitimate business expectations, but that they were "shocked" when they learned of Complainant's termination and that Complainant's direct supervisor who signed and issued the appraisals "always created a hostile working environment" and "mistreated people." Simply stated, sufficient evidence exists to believe that there is a nexus between Complainant's adverse employment action and her involvement in Jarmon-Holland's complaint of

discrimination. As such and based upon the aforementioned, probable cause exists to believe that a discriminatory practice occurred as alleged.

A public hearing is necessary to determine whether a violation of the Indiana Civil Rights Law occurred as alleged herein. Ind. Code § 22-9-1-18, 910 IAC 1-3-5. The parties may agree to have these claims heard in the circuit or superior court in the county in which the alleged discriminatory act occurred. However, both parties must agree to such an election and notify the Commission within twenty (20) days of receipt of this Notice, or the Commission's Administrative Law Judge will hear this matter. Ind. Code § 22-9-1-16, 910 IAC 1-3-6.

November 18, 2014

Date

Akia A. Haynes

Akia A. Haynes, Esq.

Deputy Director

Indiana Civil Rights Commission